

**MISSOURI COURT OF APPEALS
WESTERN DISTRICT**

JEFFERY SPAIN

APPELLANT,

v.

**R & L CARRIERS SHARED SERVICES; DIVISION OF EMPLOYMENT SECURITY
RESPONDENTS.**

**DOCKET NUMBER WD73173
MISSOURI COURT OF APPEALS
WESTERN DISTRICT**

DATE: November 15, 2011

Appeal From:

Labor and Industrial Relations Commission

Appellate Judges:

Division Three: James E. Welsh, P.J., James M. Smart, Jr., and Joseph M. Ellis, JJ.

Attorneys:

Charles Kevin Baldwin, Liberty, MO, for **Appellant**.

Kenneth Paul Carp, Clayton, MO and Robert Anthony Bedell, Jefferson City, MO, for
Respondents.

MISSOURI APPELLATE COURT OPINION SUMMARY

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APPELLANT,

v.

**R & L CARRIERS SHARED SERVICES; DIVISION OF EMPLOYMENT SECURITY,
RESPONDENTS.**

No. WD73173

Labor and Industrial Relations Commission

Before Division Three: James E. Welsh, P.J., James M. Smart, Jr., and Joseph M. Ellis, JJ.

Jeffery Spain was employed as a forklift operator by R & L Carriers Shared Services (“R & L”) from September 2008 until May 2010. His job duties included operating a forklift for the purpose of loading and unloading customers’ shipments. On April 30, 2010, Spain was operating his forklift on the freight dock when he struck Kevin McFadden’s forklift. Within minutes, Spain struck McFadden’s forklift again. The force of the second impact caused McFadden to fall forward onto the shifters of his forklift, resulting in injuries.

After an investigation, Spain was terminated from his employment. He filed a claim for unemployment benefits. R & L contested the claim. A deputy with the Division of Employment Security determined that Spain was discharged for misconduct connected with work for driving his forklift in an unsafe manner and striking McFadden’s forklift, causing injuries. Spain filed an appeal with the Appeals Tribunal, which upheld the deputy’s decision after a hearing. Spain appealed to the Labor and Industrial Relations Commission (“Commission”). The Commission adopted and affirmed the decision of the Appeals Tribunal. Spain appeals.

On appeal, Spain argues that the Commission erred in denying his claim for unemployment benefits because there was no substantial and competent evidence to support its decision, and the Commission misapplied the law. He claims that while he may have acted negligently or with poor judgment warranting his termination, his negligence did not rise to the level of misconduct so as to disqualify him from receiving unemployment benefits.

AFFIRMED.

Division Three holds: Spain’s operation of his forklift in such a careless manner that resulted in striking McFadden’s forklift twice within minutes, the second of which caused McFadden to fall onto the shifters on his forklift, resulting in his injuries, constituted negligence to such a degree as to show an intentional and substantial disregard of R & L’s interest in safety and Spain’s own duty to use care. The Commission’s decision was supported by competent and substantial evidence. The Commission did not err or misapply the law in determining that Spain was disqualified from receiving unemployment benefits based on a finding of misconduct connected with work.

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